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**UNITED STATE DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA-SAN FRANCISCO DIVISION**

ERIC GERLACH,	)	Case No.:
	)	
Plaintiff,	)	
	)	<b>COMPLAINT AND DEMAND FOR</b>
vs.	)	<b>JURY TRIAL</b>
	)	
MCMILLAN & ANDREWS, LLC,	)	<b>(Unlawful Debt Collection Practices)</b>
	)	
Defendant.	)	<b>Demand Does Not Exceed \$10,000.00</b>
	)	

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**PLAINTIFF'S COMPLAINT**

ERIC GERLACH (Plaintiff), through his attorneys, KROHN & MOSS, LTD., alleges the following against MCMILLAN & ANDREWS, LLC (Defendant):

**INTRODUCTION**

1. Count I of the Plaintiff's Complaint is based on Rosenthal Fair Debt Collection Practices Act, *Cal. Civ. Code §1788 et seq.* (RFDCPA).
2. Count II of Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, *15 U.S.C. 1692 et seq.* (FDCPA).

1 3. Defendant acted through its agents, employees, officers, members, directors, heirs,  
2 successors, assigns, principals, trustees, sureties, subrogees, representatives, and  
3 insurers.

4 **JURISDICTION AND VENUE**

5 4. Jurisdiction of this court arises pursuant to *15 U.S.C. 1692(K)*, which states that such  
6 actions may be brought and heard before “any appropriate United States district court  
7 without regard to the amount in controversy” and *28 U.S.C. 1367* grants this court  
8 supplemental jurisdiction over the state claims contained therein.

9 5. Because Defendant maintains a business office and conducts business in the state of  
10 California, personal jurisdiction is established.

11 6. Venue is proper pursuant to *28 U.S.C. 1391(b)(1)*.

12 7. Declaratory relief is available pursuant to *28 U.S.C. 2201 and 2202*.

13 **PARTIES**

14 8. Plaintiff is a natural person residing in Santa Cruz, California.

15 9. Plaintiff is a consumer as that term is defined by *15 U.S.C. 1692a(3)*, and according to  
16 Defendant, Plaintiff allegedly owes a debt as that term is defined by *15 U.S.C. 1692a(5)*  
17 and *Cal. Civ. Code § 1788.2(h)*.

18 10. Defendant is a debt collector as that term is defined by *15 U.S.C. 1692a(6)* and *Cal. Civ.*  
19 *Code §1788.2(c)*, and sought to collect a consumer debt from Plaintiff.

20 11. Defendant is a national company with its company headquarters in Lockport, Niagara  
21 County, New York.

22 **FACTUAL ALLEGATIONS**

23 12. Defendant contacted Plaintiff seeking and demanding payment for an alleged consumer  
24 debt.

25 13. Defendant left a message that stated “[t]his message is intended solely for Eric Gelach.

1 My name is Doug Willis with the office of McMillan & Andrews. I am calling about a  
2 private, confidential, and now very time sensitive legal matter that we need to discuss  
3 with you. if you would call us back at 1-877-272-8192 and refer to file 34497 it would  
4 be greatly appreciated an in your best interest to do so. Thank you for all your help Eric  
5 Gerlach.”

6 14. Defendant failed to state in the initial communication with Plaintiff that they were a debt  
7 collector and anything would be used for that purpose.

8 15. Defendant failed to provide Plaintiff with a 30 day validation notice.

9 **COUNT I**  
10 **DEFENDANT VIOLATED THE ROSENTHAL FAIR DEBT COLLECTION**  
11 **PRACTICES ACT**

12 16. Defendant violated the RFDCPA based on the following:

- 13 a. Defendant violated §1788.11(b) of the RFDCPA when Defendant placed  
14 telephone calls without disclosure of caller’s identity.  
15 b. Defendant violated §1788.17 of the RFDCPA by continuously failing to comply  
16 with the statutory regulations contained within the FDCPA, 15 U.S.C. § 1692 *et*  
17 *seq.*

18 WHEREFORE, Plaintiff, ERIC GERLACH, respectfully requests judgment be entered  
19 against Defendant, MCMILLAN & ANDREWS, LLC, for the following:

- 20 17. Declaratory judgment that Defendant’s conduct violated the Rosenthal Fair Debt  
21 Collection Practices Act,  
22 18. Statutory damages pursuant to the Rosenthal Fair Debt Collection Practices Act, *Cal.*  
23 *Civ. Code §1788.30(b)*,  
24 19. Actual damages,  
25 20. Costs and reasonable attorneys’ fees pursuant to the Rosenthal Fair Debt Collection  
Practices Act, *Cal. Civ. Code §1788.30(c)*, and

1 21. Any other relief that this Honorable Court deems appropriate.

2 **COUNT II**  
3 **DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES ACT**

4 22. Plaintiff repeats and realleges all of the allegations in Count I of Plaintiff's Complaint as  
5 the allegations in Count II of Plaintiff's Complaint.

6 23. Defendant violated the FDCPA based on the following:

- 7 a. Defendant violated §1692d of the FDCPA by engaging in conduct the natural  
8 consequence of which is to harass, oppress, and abuse Plaintiff.
- 9 b. Defendant violated §1692d(6) of the FDCPA by placing telephone calls without  
10 disclosing callers identity.
- 11 a. Defendant violated §1692e of the FDCPA by making false, deceptive, and  
12 misleading representations in connection with the collection of the alleged debt.
- 13 b. Defendant violated §1692e(10) of the FDCPA by making false representations  
14 and deceptive means to collect a debt or obtain information.
- 15 c. Defendant violated §1692e(11) of the FDCPA by failing to disclose in the initial  
16 communication that the communication was from a debt collector and anything  
17 said would be used for that purpose.

18 WHEREFORE, Plaintiff, ERIC GERLACH, respectfully requests judgment be entered  
19 against Defendant, MCMILLAN & ANDREWS, LLC, for the following:

20 24. Declaratory judgment that Defendant's conduct violated the Fair Debt Collection  
21 Practices Act,

22 25. Statutory damages pursuant to the Fair Debt Collection Practices Act, *15 U.S.C. 1692k*,

23 26. Actual damages,

24 27. Costs and reasonable attorneys' fees pursuant to the Fair Debt Collection Practices Act,  
25 *15 U.S.C. 1692k*,

28. Any other relief that this Honorable Court deems appropriate.

RESPECTFULLY SUBMITTED,

DATED: October 20, 2009

KROHN & MOSS, LTD.

By: \_\_\_\_\_

Ryan Lee  
Attorney for Plaintiff

**VERIFICATION OF COMPLAINT AND CERTIFICATION**

STATE OF CALIFORNIA

Plaintiff, ERIC GERLACH, states as follows:

1. I am the Plaintiff in this civil proceeding.
2. I have read the above-entitled civil Complaint prepared by my attorneys and I believe that all of the facts contained in it are true, to the best of my knowledge, information and belief formed after reasonable inquiry.
3. I believe that this civil Complaint is well grounded in fact and warranted by existing law or by a good faith argument for the extension, modification or reversal of existing law.
4. I believe that this civil Complaint is not interposed for any improper purpose, such as to harass any Defendant(s), cause unnecessary delay to any Defendant(s), or create a needless increase in the cost of litigation to any Defendant(s), named in the Complaint.
5. I have filed this Complaint in good faith and solely for the purposes set forth in it.
6. Each and every exhibit I have provided to my attorneys which has been attached to this Complaint is a true and correct copy of the original.
7. Except for clearly indicated redactions made by my attorneys where appropriate, I have not altered, changed, modified or fabricated these exhibits, except that some of the attached exhibits may contain some of my own handwritten notations.

Pursuant to 28 U.S.C. § 1746(2), I, ERIC GERLACH, hereby declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct.



ERIC GERLACH

DATE 10/20/2009